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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2467 of 2007

M/s.Nirani Cement Pvt. Ltd.....Petitioners

Versus

Industrial Develoopment Bank of India
& Ors. ..Respondents

Mr. A.V.Anturkar with Mr. J. Shekhar i/b. J. Shekhar & Co., for the petitioners
Mr. D.H. Thakkar i/b. Pragna Thakkar & Co., for respondent No.1.
Mr. Birendra Saraf with Mr. D. Chourasia i/b. M.K. Ambalal & Co., for Respondent No.2.
Ms.U.S. Fadia for respondent No.7, 8(b) and 9.
Mr. Kevic Satelwad i/b. Divya Shah Associates for Respondent NO.13.
Ms. Soujanya Menon i/b. Paras Kuhad & Associates for respondent No.14.
Mr. A.R. Papat, representative of Khade, Bapat & Associate, D.R.T. Receiver present in person.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 25TH APRIL, 2007.

P.C.

. Rule. Heard forthwith.

2. The petitioners were successful bidders at an auction which was held for sale of a property. The petitioners bid on 11th January, 2007 was for a sum of Rs.10.15 crores. The respondent No.13 made their bid in the sum of Rs.10.65 crores on 15th January, 2007. On 19th January, 2007 the respondent No.3 revoked their bid. The sale came to be confirmed on 29th January, 2007.

3. Aggrieved the respondent No.13 preferred an appeal before the Debt Recovery Appellate Tribunal (DRAT) being Appeal No.64 of 2007. In the Appeal they sought two prayers

(1) that their bid in a sum of Rs.10.65 crores be accepted or (2) in the alternative the order forfeiting the sum of Rs.50.00 lakhs be set aside. The D.R.A.T. after hearing the Appellants and also another party, who intervened who are Respondent No.14, by the impugned order dated 12th March, 2007 set aside the order confirming the sale in favour of the petitioner herein and issued a direction for fresh sale as set out in the order. It is this order which is the subject matter of the present petition.

4. On behalf of the petitioner learned Counsel has drawn our attention to the judgement of the Supreme Court in Food Corporation of India vs. M/s.Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 to contend that once the sale was confirmed the bidder had a legitimate expectation that his offer has been accepted and it was not open, therefore, to the learned D.R.A.T. to set aside the sale confirmed in their favour. Our attention is invited to the following observations:-

> "This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good."

Learned Counsel contends that the judgment relied upon by the D.R.A.T. in the case of Divya Manufacturing C. (P) Ltd. v. Union of India and Ors. and Tirupati Woollen

Mills Shramik Shangharsha Samity and anr. v. The Official Liquidator and Ors., AIR 2000 S.C.2346 as also the judgment in Ram and Shyam Company vs. State of Haryana and Ors., (1985) 3 SCC 267 are distinguishable in as much as in Divya Manufacturing Co. (supra) there was a Clause to interfere by the High Court after the sale is confirmed. It is submitted that based upon this clause the Supreme Court had interfered in that matter. Similarly, it is pointed out that in Ram and Shyam Company (supra) it was clear that the sale was not confirmed.

5. On the last occasion our attention was invited by the learned Counsel for the intervenor to a judgment of the learned Bench of this Court in Notice of Motion No.565 of 2004 in M/s.K.M.A. Limited Vs. Appellate Authority for BIFR & Ors., decided on 20th December, 2004.

6. On behalf of the respondents including the principal debtor it is submitted that the offer by Respondent No.14 would indicate that the property is valuable property for which the best price has not been received and there being better offers there is no reason as to why the sale in favour of the petitioner ought not to be interfered with. It is submitted that the order of the D.R.A.T. is in the public interest, the interest of the Company and the creditors and consequently this Court ought not to interfere in the exercise of the extra ordinary jurisdiction.

7. We may at the outset mention that the valuer had valued the property at Rs.1.94 crores. The reserve bid was

thereafter fixed at Rs.8.00 crores. The petitioner has bid in a sum of Rs.10.15 crores. The intervenors have offered a sum of Rs.10.75 crores and are willing to even offer higher price. In other words all this indicates that the best price for the property was not received. The very fact that the property was valued for a lower sum by the valuer at Rs.1.94 crores would itself indicate the undervaluation though the reserve price was fixed at Rs.8.00 crores.

8. It is true that the successful bidder has a legitimate expectation that his bid should be accepted. The question before this Court is on the one hand between the legitimate expectation of the petitioner and on the other hand the interest of the creditors or in other words the larger public interest. It is now settled law that every attempt should be made to get the best price for the property. If between 29th January, 2007 and 12th March, 2007 there is an offer of additional sum of Rs.60.00 lakhs to our mind that itself is an indicator that the property did not fetch the best price. In the light of that we are not inclined to interfere with the impugned order passed by the D.R.A.T.

9. We are informed by respondent No.14 that they have already deposited with the D.R.A.T. a sum of Rs.2.80 crores. In the light of that though we are dismissing the petition we are issuing the following directions:-

(i) The Intervenor respondent No.14, Respondent No.13, if advised, as also the petitioners to appear before the D.R.T.

on 30th April, 2007 at 11.00 a.m. The D.R.T. thereafter to fix the date for the bid and accept bids not only from the parties presently before this Court, but also if any other party shows interest such other parties subject to the terms as set out in para.24(d) of the order of the D.R.A.T.

(ii) The D.R.A.T. is directed to complete the process by 10th May, 2007.

(iii). Petition disposed of accordingly. No order as to costs.

. All authorities to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

(**F.I.REBELLO**, J)

(**R.M. SAVANT,J)**